Supreme Court of the United States

OCTOBER TERM, 1968

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.,
and
THE LINK BELT COMPANY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION INVOLVED

Does the Death on the High Seas Act provide the exclusive remedy for a death that occurs more than "a marine league from shore" of a state?

REASONS FOR DENYING PETITION

The Fifth Circuit in the instant cases followed the Congressional intent and the decisional law emanating from the Death on the High Seas Act when it held

the Death on the High Seas Act to be the exclusive remedy for a death which occurs beyond a marine league from a shore of a state.

STATEMENT OF CASE

THE RODRIGUE CASE:

The facts of this case are that three separate lawsuits were filed by the plaintiff against several defendants for the death of Mrs. Rodrigue's husband, which occurred 28 miles off the coast of Grand Isle, Louisiana. These cases were later consolidated. Prior to the trial on the merits in these cases, Aetna Casualty & Surety Co., insurer of Mayronne Drilling, brought a motion to be dismissed from Civil Action 3109, founded upon the assertion that it could not be properly made a party defendant under the Louisiana Direct Action Statute LSA-RS 22:655, because the death did not occur within the boundaries of the State of Louisiana. The case of Guess Vs. Reed, 290 F. 2d 622, (5th Cir., 1961) was cited in support of this contention. Judge West without written reasons dismissed Aetna Casualty & Surety Co. from Civil Action 3209, apparently, on the grounds that since the accident had occurred 28 miles off the coast of the State of Louisiana, the death did not occur within the State of Louisiana, and therefore the Louisiana Direct Action could not be applied to obtain jurisdiction over Aetna Casualty & Surety.

Just prior to the trial on the merits of these three consolidated cases, the defendants reurged several

motions to dismiss, founded on various grounds. After hearing oral argument on all of the motions, the trial judge denied the motion of all the defendants to dismiss admiralty action #810, the Death on the High Seas claim, and granted the defendant's motion dismissing civil actions 3109 and 3298.

The trial court in dismissing civil action #3109 stated at Page 143-44 of the trial transcript that since the death occurred more than a marine league from shore, the court did not have jurisdiction over the action.

In dismissing civil action #3298, the Honorable Gordon E. West referred extensively to the opinion of Judge Brown in Pure Oil Vs. Snipes, 293 F. 2d 60, (5th Cir., 1961) and stated:

> "If we are to say as this Snipes Case did say, that Louisiana Law does not apply, then we must conclude that Article 2315 of the Louisiana Civil Code does not apply but that federal maritime law which does give a right of action for wrongful death must apply. In other words, the void is not there by saying that 2315 does not apply. It does not create a void in which the plaintiff would find herself without a cause of action; on the contrary, to hold as I am holding would carry out specifically the mandate of the Snipes Case and at the same time would not deprive the plaintiff of a right of action for wrongful death, because if we apply maritime law as Judge Brown said

> in the Snipes Case must be applied, then death on the high seas is the maritime law and that death on the high seas statute does provide for wrongful death and consequently, both the intent of Congress and the interpretation at least in the Snipes Case and the rights of the plaintiff are preserved and protected."

After dismissal of the two civil actions, the trial court proceeded to hear the remaining admiralty action #810 and found the defendant Mayronne liable and awarded a judgment to the plaintiff in the amount of $75,000.00 together with interest and costs of $13,750.00 which totaled some $88,750.00.

The Fifth Circuit on appeal of the Rodrigue Case held that the Death on the High Seas Act was the exclusive remedy for this death that occurred beyond a marine league from the shore of the State of Louisiana. See Rodrigue Vs. Aetna Casualty and Surety Co., 395 F.2d 216, (5th Cir., 1968).

THE DORE CASE:

The wife and children of Joseph Dore deceased, instituted a Civil Action in the United States District Court, Western District of Louisiana, Lafayette Division, against the Link Belt Company, a foreign corporation authorized to do and doing business in the State of Louisiana, and against the Road Equipment Company, Inc. which was brought in by a supplemental petition and which is a Louisiana corporation.

The plaintiffs in Article 6 of the petition alleged that Mr. Dore was killed while working on an offshore drilling rig on South Marsh Island Block 51 in the Gulf of Mexico, which Block is approximately fifty miles south of Marsh Island, when a crane, "sold, manufactured, supplied and installed by The Link Belt Company . . . collapsed and fell a distance of more than sixty feet." It is alleged in Article 11 that petitioners bring the action under "the General Maritime Laws, the Death on the High Seas Act, 46 U.S.C.A. 761, et seq., Article 2315 of the Revised Civil Code of the State of Louisiana and under the other laws of the United States and the State of Louisiana." It is alleged in Article 12 that complainants suffered pecuniary losses, expenses and damages, including "loss of love and affection, loss of support and inheritance, loss of material aid and services, loss of parental guidance, loss of society and companionship, pain and suffering, anguish and shock totalling $670,000.00."

Defendants, The Link Belt Company and the Road Equipment Company, filed motions to dismiss for failure of the petition to state a claim on which relief could be granted and alternatively, motions for summary judgment on the principal premise that the Death on the High Seas Act, Title 46 of the United States Code Annotated, Section 761, et seq., was the exclusive remedy, if any, in the wrongful death action sought to be recognized and enforced by petitioners and, accordingly, the provisions of this Act had to be met.

The Honorable Judge Richard J. Putnam, ruled on October 26, 1966, that the Death on the High Seas Act

was the only law applicable under the allegations of the petition and, accordingly, (1) the suit was removed to the admiralty side of ourt, (2) the administratrix of the estate of Joseph Dore for her and the minors' benefit, was the proper party plaintiff, and (3) the plaintiffs' recovery was restricted to pecuniary loss.

The Fifth Circuit on Appeal, Dore V. Link Belt Co., 391 F. 2d 671 (5th Cir., 1968) affirmed the trial court's holding, stating at page 675:

> "The legislative history indicates that when Congress passed the Death on the High Seas Act it intended the remedy it provided to be an exclusive one."

ARGUMENT

DEATH ON THE HIGH SEAS ACT IS THE EXCLUSIVE REMEDY FOR DEATHS OCCURRING MORE THAN A "MARINE LEAGUE FROM THE SHORE OF ANY STATE."

These petitions depend upon the construction and the affect to be given to sections 761-768 of Title 46 USCA, which provide a remedy for a death of a person caused by a wrongful act occurring on the *"High Seas beyond a marine league from the shore of any state."* The recovery allowed under this act is provided for in Section 762, which states that recovery shall be "a fair and just compensation for the *pecuniary loss.* * * *"

The enactment of the Death on High Seas Act gave to the deceased seaman's representative a new substantive right which could be asserted in the admiralty field.

The petitioners urge that the right of action given under the provisions of the Death on the High Seas Act, is not exclusive, and that it does not supersede the right of action given by the death statute of the State of Louisiana, Article 2315, nor precludes their right to recover for the loss of love, companionship, society, and affection under the Louisiana Death Statute, when a death occurs more than a marine league from State's boundaries.

Prior to the adoption of the Death on the High Seas Act in 1920, the courts had held, that where a person's death resulted from a maritime tort on navigable waters within a state, whose statutes gave a right of action on account of death by wrongful act, the admiralty courts would entertain an action. The Harrisburg, 1886, 119 U. S. 199, 70 S. Ct. 140, 30 L. Ed. 358; Western Fuel Company vs. Garcia, 1921, 257 U. S. 233, 66 L. Ed. 210, 42 S. Ct. 89. These state wrongful death actions were allowed to be applied in the admiralty courts because Congress had not yet acted upon a uniform remedy for these deaths. The Supreme Court of the United States pointed this fact out in Lindgren Vs. United States, 1930, 281 U. S. 38, 74 L. Ed. 686, 50 Supreme Court 207, when it stated

> "These statutes 'were not a part of the general maritime law' and were recognized only

because congress had not legislated on the subject."

It is clear that the enactment of the death on the high seas act was an act on the part of Congress in order to bring uniformity in the maritime field in regards to death more than a marine league from State boundaries, and necessarily superseded the application of the death statutes of the several states which then provided various remedies for such wrongful deaths.

In Wilson v. Transocean Airlines, 121 F. Supp. 85 (N. D. Calif., 1954) Judge Goodman, in a lengthy discussion of the exact question presented to this court stated at Page 90 that:

> "The death on the high seas act was prompted, in large part, by the desire to put an end to the uncertainty attending the application of state statutes to deaths on the high seas. Many of these uncertainties would remain to plague both courts and litigants if the state statutes could still be availed of by suitors. In addition, since the death on the high seas act was drawn with the purpose to afford an exclusive, uniform federal right of action for death on the high seas, the right of action which it created is not appropriate to serve as a mere supplement to state-created rights of action on the high seas.
>
> "Moreover, any attempt to apply a state wrongful death statute to a death occurring

> on the high seas, would, today, raise a serious constitutional question. For decisions of the Supreme Court subsequent to its decision in the Hamilton, Supra, in 1907, have cast doubt on the continued vitality of the holding in that case that a state has power to create a right of action for death on the high seas."

In Jennings Vs. Goodyear Aircraft Corporation, 227 F. Supp. 246, (Del. 1964) The Court held that:

> "The Hamilton is representative of the legal chaos existing prior to the passage of the act. Application of a state wrongful death act to deaths occurring on the high seas would defeat the very uniformity which congress sought to promote and would today raise serious constitutional issues."

See also the cases of Igneri Vs. CIE de Transports Oceaniques, 323 Fed. 2d 257, (2nd Cir., 1963); Peterson Vs. United New York Sandyhook Pilots Ass'n, 17 F. Supp. 676, (E. D. Ny., 1936); First National Bank in Greenwich Vs. National Airlines, Inc., 171 F. Supp. 528, (S.D. Ny., 1958), Cert. den. 368 U.S. 859, 82 S.Ct. 102, 7 L. Ed. 2d 57, Affirmed, 288 Fed 2d, 621; Blumenthal Vs. United States, 189 F. Supp. 445, (E. D. Penn., 1960) Affirmed 306 F. 2d 16; Middleton Vs. Luckenbach S. S. Co., Inc., 70 F. 2d 326 (2nd Cir., 1934); Williams Vs. Moran, Procter, Mueser and Rutledge, 205 F. Supp. 208 (S.D. Ny., 1962); Noel Vs. United Aircraft, 204 F. Supp. 929, (Del., 1962); D'aleman Vs. Pan American World Airways, 259 F. 2d 493 (2nd Cir., 1958), concurring

opinion of Judge Waterman, Page 496; Cunningham Vs. Bethlehem Steel Co., 231 F. Supp. 934 (S. D. Ny., 1964); United States Vs. Gavagan, 280 F. 2d 319, (5th Cir., 1960); King Vs. Pan American World Airways, 166 F. Supp. 136, Affirmed 270 F. 2d 355, Cert. den. 362 U. S. 928, 4 L. Ed. S. 746; Canillas Vs. Joseph H. Carter, Inc., 280 F. Supp. 934 (S. D. Ny., 1968) and Higa Vs. Transocean Airlines, 230 F. 2d 780, (9th Cir., 1955).

We feel that these decisions are in accordance with the long settled rule that once congress has acted in the field, all state laws are superseded. See Lindgren Vs. United States, supra, not only have the majority of the courts held that a death which occurs more than a marine league from a state is *exclusively* under the Federal death on the high seas act, but so also have the majority of the legal writers in the martime field. In Gilmore and Black, The Law of Admiralty, 1957 Ed., at Page 308, the authors in discussing recovery for death, state:

> "The high seas act provides only for recovery for death caused by wrongful act, neglect or default by way of a suit for damages in admiralty for the exclusive benefit of the listed beneficiaries; it further specifies that the recovery in such suits shall be a fair and just compensation for the pecuniary loss suffered by the persons for whose benefit this suit is brought. The high seas act and the Jones Act, incorporating FELA, were passed almost at the same time; *it is a reasonable assumption that the failure of congress to provide specifically in the High Seas Act for the double*

> *recovery must have been deliberate and that only pecuniary loss to the beneficiaries was meant to be recoverable.*" (Emphasis added)

In the work by Mr. Baer, The Admiralty Law of the Supreme Court, 1963 Ed., at Page 99-100 we find the following discussion in regard to the exclusiveness of the death on the high seas act.

> "But, with the passage of the death of the high seas act, the state wrongful death acts were inoperative as to the deaths caused on the high seas *beyond a marine league* from the shore of any state." (Emphasis added)

See also Hughes, Death Actions in Admiralty, 31 Yale Law Journal, 115 (1921); Magruder and Grout, Wrongful Death within the Admiralty Jurisdiction, 35 Yale Law Journal 395, 422-3 (1926); Handbook of Admiralty Law in the United States; Robinson (1939) P. 140.

An examination of the congressional history of the death on the high seas act further does not supoprt the contention that the state death actions were intended to supplement the death on the high seas act for maritime deaths more than a marine league from the state. In Wilson Vs. Transocean Airlines, supra, the court dealt extensively with the legislative history of this act. At Page 89 of this decision, the court stated that it was clear from the language of the bill and from the reports of both houses of congress "that it was intended that the federal rights of action be exclusive for deaths upon the high seas and that the state wrong-

ful deaths act should supply the right of action for deaths upon state territorial wafers." See also Develin Vs. Flying Tiger Lines, Inc., 220 F. Supp. 924 (S. D. NY. 1963); Hughes, Death Actions in Admiralty, supra, p. 118; Magruder and Grout, Wrongful Death Within the Admiralty Jurisdiction, supra, p. 422-3.

In light of the foregoing decisions, legislative history, and treatises and in accordance with the principles therein stated it seems inescapable that The Death on The High Seas Act adopted in 1920 preempted the field in regard to deaths occurring more than a marine league from state boundaries.

In the case before your honors, it is uncontraverted that the deaths occurred 28 and 50 miles off the coast of the State of Louisiana. These distances are of course well in excess of the statutory marine league, thus permitting only application of the Federal Act.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

This is to certify that I have this day mailed a copy of the above and foregoing Brief in Opposition to Petition for a Writ of Certiorari to Mr. A. Deutsche O'Neal, Mr. Philip E. Henderson, Mr. Charles J. Hanemann, Jr., P. O. Box 590, O'Neal Building, Houma, Louisiana; Mr. George Arceneaux, Jr., 311 Goode Street, Houma, Louisiana; and Mr. Alfred S. Landry, Landry, Watkins, Cousin & Bonin, 211 East Main Street, New Iberia, Louisiana.

September ____, 1968

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